

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.146 OF 2002

Raju Sitaram Sarvade
r/o. Gajanan Nagar, Majrewadi
Solapur ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr.Nitin Pradhan with Miss.S.D. Khot for Appellant
Mrs.V.R. Bhosale, APP, for Respondent

CORAM: V.G. PALSHIKAR, Ag. C.J. &
SMT.NISHITA MHATRE, J.

DATED: SEPTEMBER 28, 2006

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. This Appeal calls in question the judgment and order of the Additional Sessions Judge, Solapur in Sessions Case No.75 of 2001. By this judgment, Accused No.1 who is the present appellant was convicted for the offence punishable under section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life as also to pay a fine of Rs.5,000/- Accused No.2, the father of Appellant No.1, was acquitted of the same charge.

2. With the assistance of the learned Advocate for the Appellant and the learned Assistant Public Prosecutor, we have perused the evidence on record. We have reappreciated the evidence available before the trial Court and find that we are unable to agree with

the conclusions arrived at by the trial Court.

3. The story that emerges from the evidence before the trial Court is that accused No.1 and the deceased were construction workers. They had illicit relations and were residing as husband and wife. They had one child. It is the case of the prosecution that accused No.2 kept insisting that accused No.1 should break off his relations with the deceased so that he could get married. Accused No.1 also made it clear to the deceased that he did not wish to continue with their illicit relationship. The prosecution case is that accused No.2 instigated accused No.1 to set the deceased on fire in the event she refused to oblige and break off the relationship. Provoked by this instigation, accused No.1 returned home on 10.12.2000 at about 7.30 pm and started abusing the deceased. Since his abuses and insistence on the discontinuance of their relationship did not have the desired effect on the deceased, accused No.1 poured diesel on the deceased and threw lighted matchstick on her which set her on fire. Her daughter Zarina extinguished the fire with the help of some other persons. She then took her to the Civil hospital with the help of Lingawwa Solapure, a social worker.

4. The victim was admitted to the hospital at about 9.45 pm and the case history was recorded by the Doctor. The victim disclosed that accused No.1 had poured diesel

on her and set her ablaze. The police was immediately informed. The victim's statement was recorded by the police after ensuring that she was conscious and in a position to have a statement recorded. In this statement, the victim disclosed how she had got burnt and that the accused No.1 ignited the fire. This statement was recorded at about 10 pm. The police officer had also issued a letter to the Executive Magistrate for recording the dying declaration of the victim. Accordingly, the Executive Magistrate recorded the dying declaration at 10.50, the same night.

5. Thus, there are three dying declarations of the deceased. We will therefore, have to consider whether each of them is consistent with the other and whether they should be accepted. The other evidence led by the prosecution is of the Medical Officers, PW3 and PW4, who have deposed regarding the condition of the deceased prior to recording her statement. PW2 is the Medical Officer who conducted the postmortem examination. PW1 is the Executive magistrate, who recorded the dying declaration of the deceased. PW5, PW6 and PW7 are the panchas who were examined to prove the spot panchanama, seizure panchanama and the arrest panchanama. All the three witnesses have been declared hostile. PW8 is the daughter of the deceased. She has not supported the case of the prosecution and has, therefore, been cross-examined by the prosecution. PW9, the police

constable who handed over the articles to the Chemical Analyser's office. PW10 is the Investigating Officer.

6. It is therefore, apparent that none of the witnesses have supported the case of the prosecution except the Doctors, the Special Executive Magistrate and the Investigating Officer. The victim's 11 year old daughter has also turned against the prosecution. The prosecution has examined her because she was an eye witness. However, her testimony will have to be discarded in its entirety.

7. We are aware of the settled position in law that a conviction could be based solely on a dying declaration. However in the present case, we are faced with several statements of the victim. We would, therefore, have to consider whether each of them is consistent with the other or there have been omissions or improvements in the three statements.

8. The first declaration which is relied on by the prosecution is the history noted by PW3 who was present when the victim was admitted to the hospital. He has recorded that the relatives of the victim had informed the hospital that she had suffered homicidal burns after diesel was sprinkled on her body and she was set ablaze by Raju Sarawade at about 7.30 pm. Therefore, this in fact is not a declaration made by the deceased.

9. The declaration at Exhibit 29 has been recorded by the police constable at about 10 pm on 10.12.2000. There are endorsements from the Medical Officer to indicate that the patient was conscious and in a state to give a valid declaration. In this statement, the victim has stated that accused No.1 had abused and assaulted her at about 7.30 pm on that day. He had also assaulted her 3 days earlier. She has stated that accused No.1 had insisted that they break off their relationship. Then accused No.1 drained out the diesel from a stationary truck which was parked on the road outside her house. He entered her house with the can of diesel and emptied it on the victim. He then ignited a matchstick. The victim has stated that she cried out while he was igniting the matchstick. Her daughter Zareena who was present also started screaming. Her daughter tried to intervene when the accused rushed towards the victim. The victim has then stated that she started running away from the house, the accused chased her and threw the lighted matchstick on her. She raised an alarm. Her daughter hired a rickshaw and then she and one Prashant Dhaware and the social worker, Lingawwa Solapure, put the victim in the rickshaw and admitted her to hospital. She has stated in this statement that she disclosed to Bapu and Mrs.Solapure that she was set on fire by the accused after being doused with diesel, when her daughter was present in the house. Therefore,

what emerges from this declaration is that the diesel was poured on the victim in her house and then she ran out of the house. The accused chased her, went behind the stationary truck and he threw the lighted matchstick on her outside her house. Therefore, the spot where the accused allegedly threw the lighted matchstick on the victim is behind the parked truck. The 3rd declaration which is at Exhibit 21 is not consistent with the earlier one. This statement has been recorded 50 minutes after the first one. However, the statement does not make any reference to the stationary truck parked outside her house, nor to the accused having extracted diesel from the truck, nor to the chase, nor to her having been set on fire behind the truck. All that is mentioned in this statement is that since she refused to break off their liaison, the accused doused her with diesel from a can and set her ablaze with a lighted matchstick in front of her house. She has spoken about Zarina having been present and that she tried to extinguish the flames. She had also spoken about the two other persons, who helped her into the rickshaw. Significantly, this declaration does not contain any reference to the stationary truck.

10. Therefore, both these declarations are inconsistent. The last one contains several omissions and in our opinion, these have not been explained satisfactorily by the prosecution.

11. The prosecution being faced with hostile witnesses ought to have examined Mrs.Lingawwa Solapure and Shri Prashant Dhaware who the victim has mentioned helped her daughter to extinguish the flames and admit the victim to hospital. The prosecution has failed to examine these witnesses for some inexplicable reason. In such circumstances, we have no alternative but to acquit the accused for lack of evidence.

12. Appeal allowed. The conviction and sentence imposed by the learned Additional Sessions Judge, Solapur is set aside. The appellant be released from jail forthwith, if not otherwise required in law.